

# Notice of Allowability

Application No.

09/335,376

Examiner

Talivaldis Ivars Smits

Applicant(s)

LIM, JAE S.

Art Unit

2626

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Amendment of August 15, 2007.
2. ☐ The allowed claim(s) is/are 1-9, 11-16, 18-21, 23, 28-35, 37-50, 54, 55, 57-64, 66-72, 74-77, 79-81, 85-88, 96, 97, 99-102, 106-109, 116-120, 122-126, 128-131, 133-137, and 139-153.

3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some\* c) ☐ None of the:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.

(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached

1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.

(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of

Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material

5. ☐ Notice of Informal Patent Application (PTO-152)

6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_

7. ☐ Examiner's Amendment/Comment

8. ☒ Examiner's Statement of Reasons for Allowance

9. ☐ Other \_\_\_\_\_.

***Response to Amendment***

1. In response to the Office Action mailed April 4, 2007, applicant has submitted an Amendment to correct the therein indicated defects in this Reissue Application.

Also the inventor has submitted the needed reissue declaration identifying an error which is relied upon to support the reissue application, which allowed him to broaden the claimed subject matter.

The Amendment now includes a signed statement that assignee consents to the reissue and offers to surrender US Patent 5,640,486, and indicates the signer's capacity to act on behalf of the assignee.

Finally, the claims have now been put in the appropriate format for a Reissue Application.

Thus, the defects in the Reissue Application that were cited in said previous Office Action have all been corrected.

2. To review the relevant portion of the history of this Reissue case, the Board of Patent Appeals and Interferences remanded it to the examiner on August 13, 2003, to determine whether the recapture rejections under 35 USC 251 of Claims 9, 11-16, 18-21, 23, 28-35, 37-50, 54, 55, 57-64, 66-72, 74-77, 79-81, 85-88, 96, 97, 99-102, 106-109, 116-120, 122-126, 128-131, 133-137, and 139-153 in the Examiner's Answer of August 20, 2002, remain appropriate in view of *Ex parte Eggert*. These were the only claim rejections made therein.

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Due to various clerical errors the papers for the case were lost in transit back to the examiner. Also, the BPAI decision was lost from the file wrapper. The case having been finally found, and, since the BPAI could not find a copy of its decision, a copy thereof was obtained from applicant's representatives on June 5, 2006.

The examiner determined that, in view of *Ex parte Eggert*, there is no improper recapture, but certain defects were found in the application. So, the defects now having been corrected, the claims having been found to not have improper recapture in view of *Ex parte Eggert*, and there still being no prior art rejections found, the pending claims are now allowed, next.

***Allowable Subject Matter***

3. Claims 1-9, 11-16, 18-21, 23, 28-35, 37-50, 54, 55, 57-64, 66-72, 74-77, 79-81, 85-88, 96, 97, 99-102, 106-109, 116-120, 122-126, 128-131, 133-137, and 139-153 are allowed. The following is an examiner's statement of reasons for allowance:

Claims 1-8 are allowed for reasons given in allowing the original US Patent 5,646,486.

Since the remaining pending claims were only rejected because of improper recapture, in view of the recapture standard in *Ex parte Eggert*, the recapture rejection has been withdrawn and, no new prior art found to reject, the remaining claims are allowed.

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4. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

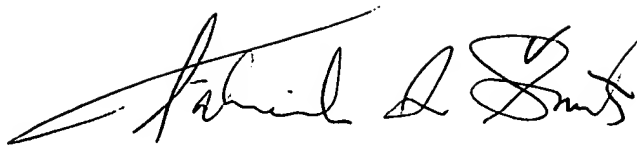
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Talivaldis Ivars Smits whose telephone number is 571-272-7628. The examiner can normally be reached on 8:30 a.m. to 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richemond Dorvil can be reached on 571-272-7602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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8/27/2007

A handwritten signature in black ink, appearing to read 'Tālisvaldis Nars Smits', written in a cursive style.

TĀLIVALDIS NARS SMITS  
PRIMARY EXAMINER